A

Homewest Sdn Bhd v Vision Returns Sdn Bhd

B HIGH COURT (SHAH ALAM) — SUIT NO 22C–23–11 OF 2014
SEE MEE CHUN J
2 JULY 2015

C *Civil Procedure — Pleadings — Parties bound by — Defendant's submission that contract was lawfully determined due to plaintiff's failure to proceed with due diligence not pleaded — Submission rejected*

D *Contract — Building contract — Claim for work done — Damages for wrongful termination — Whether contract unlawfully terminated or expired — Determination of commencement date of contract — Whether plaintiff entitled to losses for not being able to perform contract in its entirety — Whether amounts under progress claims payable to plaintiff — Whether non-certification of progress claims by architect fatal to plaintiff's claim — Contracts Act 1950 s 74(1)*

E

The plaintiff claimed against the defendant for work done under a construction contract and for damages for wrongful termination of the contract. The defendant counterclaimed for damages suffered as a result of appointing a new contractor to take over and the additional costs in the difference of contract price. The defendant had appointed the plaintiff as contractor to carry out civil and structural work for a project. The plaintiff contended that the contract had been unlawfully terminated whereas the defendant contended that the contract had expired and was not extended. The primary issues for determination were whether the termination of the contract was lawful and the claim for work done.

Held, allowing the plaintiff's claim and dismissing the defendant's counterclaim with costs:

H (1) From the clear words of the letter dated 4 April 2012 from the defendant to the plaintiff 'you can commence work at the site once we received your insurance' it was clear that the date of commencement was after the plaintiff had sent the defendant the insurance. This was done on 9 October 2012. This meant that the contract commenced at the earliest on 9 October 2012. The defendant's contention that the commencement date was on 1 June 2012, when the plaintiff commenced piling works at the project site, was contrary to the letter dated 4 April 2012 read together with cl 3.2 of the letter of award (see paras 9–10).

(2) There must always be a fixed and certain commencement and expiry date in a construction contract or for that matter any contract. Just because the plaintiff was allowed into the site much earlier to do preparatory work did not change the commencement date of the contract (see para 12).

(3) The defendant's submission that the contract was lawfully determined by the defendant upon the plaintiff's failure to complete the work or proceed with due diligence could not be accepted as this was never pleaded (see para 13).

(4) The contract had not expired as at 31 May 2013 and it was thus wrongly terminated (see para 14).

(5) This was a lump sum contract and as such, the plaintiff was entitled to losses of RM1,279,484.53 from not being able to perform the contract in its entirety. Such losses are claimable pursuant to s 74(1) of the Contracts Act 1950 being losses which parties knew at the time of contract to likely result from the breach of contract (see para 14).

(6) The amount certified by the architect in respect of progress claims No 1–5 (excluding retention sum of 5%) was RM1,415,356.03. An amount of RM695,000 was paid by the defendant. The defendant did not dispute progress claims No 1–5 and neither did it dispute the amount paid. It was further not disputed that the balance sum due to the plaintiff under progress claims No 1–5 was RM445,195.91 (see para 18).

(7) It was not disputed that the defendant and the architect had received progress claims No 6–7 and the architect had not certified them. The architect's evidence in not approving the claims was that there were No consultant reports to support the claims. This was an internal arrangement between the architect, the defendant and the consultants. The plaintiff had complied with the requirements of cl 3.6 in submitting progress claims No 6–7 to the defendant and architect. Non-certification by the architect was not fatal to the plaintiff's claim (see paras 23 & 26).

(8) the defendant's counterclaim was premised on the expiry of contract on 31 May 2013 and that it could not be extended due to the plaintiff's failure to complete the project within the period given and that the plaintiff had stopped work since 23 april 2013. As the court found that the contract had not expired, the issues raised on non-completion on time and stopping work were not relevant. In any event, the damages put forth as being suffered by the defendant in the appointment of new contractors to take over, additional costs in the form of difference of contract price, not being able to complete within time and losses in terms of costs and time were not proved in that no evidence was led at all in this regard (see para 32).

[Bahasa Malaysia summary

Plaintif menuntut terhadap defendan untuk kerja yang telah disiapkan di bawah kontrak pembinaan dan untuk ganti rugi untuk penamatan salah kontrak. Defendan menuntut balas untuk ganti rugi yang dialaminya akibat daripada pelantikan kontraktor baru untuk mengambil alih dan kos tambahan bagi perbezaan harga terhadap harga kontrak. Defendan telah melantik plantif sebagai kontraktor untuk menjalankan kerja sivil dan penstrukturan untuk sebuah projek. Plaintif menghujahkan bahawa kontrak telah pun ditamatkan dengan menyalahi undang-undang manakala defendan menghujahkan bahawa kontrak telah tamat tempoh dan tidak dilanjutkan. Isu utama untuk penentuan adalah sama ada penamatan kontrak adalah sah di sisi undang-undang dan tuntutan untuk kerja yang telah siap.

Diputuskan, membenarkan tuntutan plaintif dan menolak tuntutan balas defendan dengan kos:

(1) Daripada perkataan jelas daripada surat bertarikh 4 April 2012 daripada defrndan kepada plaintif 'you can commence work at the site once we recieved yoir insurance' adalah jelas bahawa tarikh permulaan adalah selepas plaintif telah menghantar defendan insurans itu. Ini dilakukan pada 9 Oktober 2012. Ini bermaksud kontrak bermula seawal 9 Oktober 2012. Hujahan defendan adalah tarikh permulaan adalah pada 1 Jun 2012, apabila plaintif memulakan kerja cerucuk di tapak projek, adalah bertentangan dengan surat bertarikh 4 April 2012 dibaca bersama dengan klausa 3.2 surat award (lihat perenggan 9–10).

(2) Mesti sentiasa terdapat permulaan yang tetap dan tertentu dan tarikh tamat tempoh dalam kontrak pembinaan atau untuk perkara itu apa-apa kontrak. Hanya kerana plaintif dibenarkan masuk ke tapak lebih awal untuk menjalankan kerja-kerja persiapan tidak menukarkan tarikh permulaan kontrak (lihat perenggan 12).

(3) Hujahan defendan bahawa kontrak adalah ditentukan secara sah di sisi undang-undang oleh defendan atas kegagalan plaintif untuk menyiapkan kerja atau meneruskan dengan usaha wajar tidak boleh diterima memandangkan ia tidak pernah diplidkan (lihat perenggan 13).

(4) Kontrak tidak tamat tempoh pada 31 Mei 2013 dan oleh itu ia telah ditamatkan secara salah (lihat perenggan 14).

(5) Ini adalah kontrak sekali gus dan seperti itu, plaintif berhak kepada kerugian sebanyak RM1,279,484.53 dari tidak dapat meneruskan untuk pelaksanaan kontrak itu secara keseluruhannya. Kerugian seperti itu boleh dituntut menurut s 74(1) Akta Kontrak 1950 menjadi kerugian yang mana pihak-pihak tahu sewaktu masa kontrak untuk kemungkinan akibat daripada pelanggaran kontrak (lihat perenggan 14).

(6) Amaun yang disahkan oleh arkitek berkaitan progres tuntutan No 1-5 (tidak termasuk 5% jumlah tahanan) adalah RM1,415,356.03. Satu amaun sebanyak RM659,000 telah dibayar oleh defendan. Defendan tidak mempertikaikan progres tuntutan No 1-5 dan tidal juga ia mempertikaikan amaun yang telah dibayar. Ia selanjutnya tidak dipertikaikan bahawa jumlah baki tertunggak kepada plaintif di bawah progres tuntutan No 1-5 adalah RM445,195.91 (lihat perenggan 18).

(7) Ia tidak dipertikaikan bahawa defendan dan arkitek telah menerima progres tuntutan No 6-7 dan arkitek itu belum mengesahkannya. Keterangan arkitek dalam tidak mengesahkan tuntutan adalah tiada laporan perunding untuk menyokong tuntutan. Ini adalah aturan dalaman antara arkitek, defendan dan perunding. Plaintif telah mematuhi dengan kehendak klausa 3.6 dalam menghantar progres tuntutan No 6-7 kepada defendan dan arkitek. Tiada pengesahan oleh arkitek tidaklah fatal kepada tuntutan plaintif (lihat perenggan 23 & 26).

(8) Tuntutan balas defendan adalah berdasarkan tamat tempoh kontrak pada 31 Mei 2013 dan ia tidak boleh dilanjutkan disebabkan oleh kegagalan plaintif untuk menyiapkan projek dalam tempoh yang diberikan dan bahawa plaintif telah berhenti kerja sejak 23 April 2013. Memandangkan mahkamah mendapati bahawa kontrak belum tamat tempoh, isu yang ditimbulkan tentang tidak siap pada waktu dan berhenti kerja adalah tidak relevan. Dalam apa-apa keadaan, ganti rugi yang dikemukakan sebagai yang dialami oleh defendan dalam pelantikan kontraktor baru untuk mengambil alih, kos tambahan dalam bentuk perbezaan harga kontrak, tidak dapat menyiapkan dalam masa dan kerugian berkaitan kos dan masa tidak dibuktikan kerana tiada keterangan yang membawa kepada perkara ini (lihat perenggan 32).]]]]]]

Notes

For cases on claim for work done, see 3(3) *Mallal's Digest* (5th Ed, 2015) paras 3925–3943

For cases on parties bound by, see 2(4) *Mallal's Digest* (5th Ed, 2015) paras 7182–7189.

Cases referred to

Neale v Richardson [1938] 1 All ER 753

Rebecca Nelson (Ms Lu Lan Chin @ Lan Chen with her) (Lan Chen & Assoc) for the plaintiff.

Suresh Sachithanantham (Amera bt Abu with him) (Rastam Singa & Co) for the defendant.

See Mee Chun J:

INTRODUCTION

[1] This is the plaintiff's claim against the defendant for work done on a contract arising from letter of award dated 24 December 2010 (LA B 1–5), release of retention sum and damages for wrongful termination of contract. This was in respect of a project *Cadangan membina 42 unit rumah teres satu tingkat di atas Lot 3603 Jalan Kebun Klang* ('the project') for a contract sum of RM3,385,800. It is an agreed fact the defendant had appointed the plaintiff as contractor to carry out civil and structural work for the project. The defendant counterclaims, inter alia, for damages suffered as a result of appointing a new contractor to take over and the additional costs in the difference of contract price.

[2] Witnesses for the plaintiff were Mr Chong Chee Heng (PW1, director and witness statement marked as WSP1), Ms Aneys Tan (PW2, accounts executive and witness statement marked as WSP2) and Mr Sam Choon Poh (PW3, architect for project and subpoenaed witness). Witnesses for the defendant were Ms Siti Noor Juliana bt Amran (DW1, site clerk and witness statement marked as WSD1) and Mr Lee Lai Heng (DW2, director and witness statement marked as WSD2).

ISSUES

[3] The primary issues for determination are whether the termination of the contract was lawful and the claim for work done.

WRONGFUL TERMINATION

[4] The opposing contentions are wrongful termination and expiry of contract.

[5] By letter dated 31 May 2013 (B 89) the defendant wrote to the plaintiff stating as follows:

> ... the contract for the abovementioned project commenced in the month of May 2012 has expired and regret to inform that we have decided not to extend the contract due to the following-
>
> 1. You failed to complete the project on the duration period given to you;
> 2. You have stop work at the project site on 23/4/2013 until to-date.

[6] The plaintiff contends this amounted to an unlawful termination whereas the defendant contends the contract had expired and was not

extended. This in turn depends on the date of commencement of contract. Clause 3.2 of LA provides as follows:

> 3.2 that you shall commence the works upon receipt of our instructions pertaining thereto and thereafter regularly proceed with and complete the same, unless otherwise agreed to be extended by us, within a period of twelve (12) months or such other period of time as we shall prescribe from time to time from the 1st day of June 2011 or such date the possession of the project site is delivered to you for the purpose of the contract, whichever is later, ...

[7] This clause envisages three situations under which the contract commences ie upon the defendant's instructions to commence; any period prescribed by the defendant from 1 June 2011 or date of site possession to the plaintiff.

[8] The following relevant facts were agreed:

(a) the defendant through letter dated 15 June 2011 (B 6) informed the plaintiff works at site will be postponed because the building plan was yet to be approved by the authorities;

(b) the defendant through letter dated 4 April 2012 (B 7) wrote to the plaintiff the building plan had been approved and the plaintiff can commence work after the defendant has received public risk insurance, contractor's all risks and workmen's compensation insurance (insurance); and

(c) on 9 October 2012 the plaintiff faxed to the defendant copies of the insurance.

[9] From the clear words of letter dated 4 April 2012 from the defendant to the plaintiff 'you can commence work at the site once we received' your insurance it is clear the date of commencement is after it has sent the defendant the insurance. This was done on 9 October 2012. This must necessarily mean the contract commenced at the earliest on 9 October 2012. With regard to the period of coverage in B 9 being from 25 May 2012 to 24 November 2013 and dated 25 September 2012 PW1 has explained this was because he had received letter dated 4 April 2012 on 23 May 2012 by fax and he then submitted to his insurance agent who took time to process the application (p 17/89 NOP PW1).

[10] The defendant had contended the commencement date is on 1 June 2012 when the plaintiff commenced piling works at the project site. This is contrary to the letter dated 4 April 2012 read together with cl 3.2 of LA. In any event this is not supported by the evidence as the primary document on piling work at B 200 would show at best work on 13 and 18 June 2012. Further for

13 June 2012 the words 'Blok 9 unit' are shown and for 18 June 2012 'Blok 12 unit'. This was for a project of 42 units and DW1 who prepared the document said she had the document to show pile points for Block 10 unit and Block 11 unit but it's not in the bundle (p 25/59 NOP DW1). DW1 when asked where it states 'piling' replied 'tidak boleh hendak jawap' (p 28/59 NOP DW1). She disagreed B 200 only meant 'kerja-kerja menandakan pile point dan bukan kerja-kerja piling'. DW1 had also prepared B 196 entitled 'Site Progress Lot 3603 which is a summary of activities for the dates stated therein. It was based on daily reports for which the reports for 20, 24 and 26 April 2012 and 13 and 18 June 2012 were in bundle of documents. She disagreed B 196 did not show piling work had started but agreed it was not so written (p 35/59 NOP DW1-'memang tidak ditulis dekat sini').

[11] PW1 had also explained the piling work had been done by contractors engaged by the defendant and after the plaintiff had entered site was it included as part of the plaintiff's work and the plaintiff was responsible for claims to be made for the work and payment to be made to the piling contractors. This therefore explains the claim for piling work in first progress claim.

[12] PW1's own evidence he had gone into the site in August 2012 to do preparatory work does not detract from what should be the commencement date of the contract. As explained by PW1 in Q&A 24 of his witness statement:

> As far as the plaintiff is concern the contract can only commence after the defendant has received the Contractor's All Risk and Workmen Compensation Insurance because this is the defendant's instruction to the plaintiff.
>
> There must always be a fixed and certain commencement and expiry date in a construction contract or for that matter any contract. Just because the plaintiff is allowed into the site much earlier to do preparatory work does not change the commencement date of the contract. It is a bit like a Tenancy Agreement where there will be a commencement date stated in the Tenancy Agreement but the landlord may allow the tenant into the premises earlier to do renovation works, etc.

[13] The defendant's additional submission dated 1 April 2015 the contract was lawfully determined by the defendant upon the plaintiff's failure to complete the work or proceed with due diligence cannot be accepted as this was never pleaded. What was pleaded as in para 10(e) of defence was expiry of the contract on 31 May 2013. Although in para 10(a) the defendant states the plaintiff had stopped working at the site since 23 April 2013 this was not in specific reference to determination of contract due to failure to complete or proceed with due diligence.

[14] The contract had not expired as at 31 May 2013 and it was thus wrongly terminated.

[15] It was PW'1s evidence this was a lump sum contract plaintiff is entitled to losses of RM1,279,484.35 from not being able to perform the contract in its entirety. This was explained by PW1 in Q&A 10 of his witness statement as follows:

> The contract between the plaintiff and the defendant is a lump sum contract in the sum of RM3,385,800. Because the defendant had unlawfully terminated the contract the defendant had suffered losses in the sum of RM1,279,484.35 the particulars whereof are as follows:
>
> | | | |
> |---|---|---|
> | | Agreed Total Contract Sum Deduct | -(RM3,385,800.00) |
> | (a) | Total sum of money approved by the Architect through Architect's Certificates No. 1-5 | -(RM1,415,356.03) |
> | (b) | 5% retention sum approved by the Architect As at Architect Certificate No. 5 | -(74,492.42) |
> | (c) | Progress Claim No. 6 dated 31-5-2013 | - (RM498,102.50) |
> | (d) | Progress Claim No. 7 dated 30-6-2013 | - (RM87,247.67) |
> | (d) | 5% retention sum for Progress Claim No. 6 Dated 31-5-2013 and Progress Claim No 7 Dated 30-6-2013. | |

[16] Such losses are claimable pursuant to s 74(1) of the Contracts Act 1950 being losses which parties knew at the time of contract to likely result from the breach of contract. The aforesaid section provides as follows:

> 74(1) When a contract has been broken, the party who suffers by the breach is entitled to receive, from the party who has broken the contract, compensation for any loss or damage caused to him thereby, which naturally arose in the usual course of things from the breach, or which the parties knew, when they made the contract, to be likely to result from the breach of it.

CLAIM FOR WORK DONE

[17] A total of seven progress claims were submitted.

(a) progress claims No 1–5

[18] The amount certified by the architect (PW3) in respect of progress claims No 1–5 (excluding retention sum of 5%) is RM1,415,356.03. An amount of RM695,000 was paid by the defendant. The defendant through DW2 has not disputed progress claims No 1–5 and neither has it disputed the amount paid. It was not disputed that there were deductions made by the plaintiff for payments made directly by the defendant to four of the plaintiff's suppliers and subcontractors totalling RM275,160.12. It was further not disputed the balance sum due to the plaintiff under progress claims No 1–5 (excluding retention sum of 5%) would be RM445,195.91.

[19] It was however the defence the plaintiff had failed to make other deductions in respect of payment by the defendant to the plaintiff's suppliers and subcontractors. It was submitted by the plaintiff this had not been specifically pleaded to which the court finds this had been pleaded in paras 5(c) and 6 of defence. Who these suppliers and subcontractors were and the amount paid is a matter of evidence. It was DW2 evidence in Q & A 63–65 of his witness statement (WSD2) the amount outstanding was RM355,805.91 as they had paid a total of RM89,390 to Delima Sejati Enterprise (Delima), Lim Electrical Works (Lim) and KC Lee Construction Enterprise (Lee) and the authorisation was in letter dated 20 April 2013 (B 48-49). In cross-examination he said there was nothing in that letter to state the defendant could pay to the three firms the aforesaid amount. In re-examination he referred to para 4.4 as the authorisation and his letter dated 26 September 2013 (B 75).

[20] Although the plaintiff by letter dated 12 April 2013 (B 47) had informed the defendant payments to suppliers and subcontractors would be made from the plaintiff it is the court's finding para 4.4 of letter dated 20 April 2013 is the authorisation from the plaintiff to the defendant to pay Delima, Lim and Lee as evident from the words 'the total certified payable sum payable to Delima/Lim/Lee shall not exceed' their respective contract sum. There was however no proof of payment to these three and no acknowledgment of receipt from them.

[21] In its oral reply the defendant had referred to B 85–88. This document appears to be an attachment to B 83–84 which is a letter dated 7 May 2013 from the defendant to the plaintiff it had overpaid the plaintiff and it had not taken up payment paid directly by the defendant. B 85–88 had not been specifically referred to PW1 or DW2 in the context of this issue on deductions made for the defendant's payment. In any event B 83–84 had been denied by the plaintiff by its letter dated 21 May 2013 (B 57).

[22] The defendant has not proved its assertion it had paid RM89,390 to Delima, Lim and Lee and as such there is an amount of RM445,195.91 excluding retention sum of 5% due to the plaintiff under progress claims No 1–5.

(b) progress claims No 6–7

[23] It is not disputed the defendant and the architect had received progress claims No 6–7 and the architect had not certified them. Progress claim No 6 for RM498,102.50 (B 92–145) is dated 31 May 2013 and No 7 for RM585,350.17 (B 147–193) dated 30 June 2012. In his examination-in-chief PW3 stated in the process of certification he needed verification from the other

co consultants. He had not certified progress claims No 6–7 as the contract had lapsed. He had certified the earlier progress claims despite the expiry of the contract as it was only at progress claim No 6 it dawned on him. When he certified progress claims No 1–5 he did not realise the contract had expired. He was referred to letter dated 9 July 2013 (B 46) from the defendant's lawyer to him and stated he was instructed not to entertain any claim beyond 31 May 2013 and that he was authorised to approve claims made on or before 31 May 2013. He did not seek instructions from the defendant. He didn't visit the site for progress claim No 7 and cannot recall if he visited after 31 May 2013. In cross examination he said it is normal procedure to have other consultant report prior to architect's approval. He cannot recollect if there were consultant reports submitted to support progress claims No 6–7 and he would require such reports before he can approve the claims. If he had not been notified of expiry of contract he is unable to approve progress claim No 6 without consultant report. He is No position to approve progress claim No 7 without consultant report. As to whether the letter from the defendant's lawyer was the primary reason he rejected progress claims No 6–7 his answer was 'not really no'. In re-examination he stated the consultants give him the feedback before he does the final certification of the work. He does the final certification and quantification.

[24] DW2 stated the defendant had not asked the architect to determine the work done pursuant to progress claims No 6–7.

[25] Clause 3.6 of LA provides as follows:

> ... you shall submit to us or such nominated professional firm(s) or consultant(s) ('the Consultant') progress claim for work done but unclaimed once a month (or 30 days) ... for the Consultant to ascertain and certify the payment claim amount ('Certified Sum') and the issuance of requisite certificate(s). The payment shall be made as soon as practicable forthwith our receipt of any certificate or duplicate copy thereof from the Consultant.

[26] If as per the defendant's submission they are not liable due to non-certification by the architect it is not a complete defence. PW3's evidence in not approving the claims is there were No consultant reports to support the claims. If as per PW3's evidence this is normal procedure this is an internal arrangement between the architect, the defendant and the consultants.

[27] The plaintiff has complied with the requirements of cl 3.6 in submitting progress claims No 6–7 to the defendant and architect.

[28] Non-certification by the architect is thus not fatal to the plaintiff's claim. Refer to Hudson's *Building and Engineering Contracts* (11th Ed Vol 1) and *Neale v Richardson* [1938] 1 All ER 753 that a failure or neglect to certify

does not bar a claim. In Hudson's at pp 791–792 it was stated:

> ... there are certain circumstances in which the necessity of obtaining a final certificate can be dispensed with, ...

and at *Neale* where at p 753 it is stated:

> It was the duty ... to decide whether the unissued certificate ought to have been issued. As he had failed to do this, the lack of a certificate was no bar to the plaintiff's right to recover the balance due.

[29] The court will have to consider the circumstances under which the architect did not certify for which there appears to be a few reasons in that the contract had lapsed but primarily because the reports of consultants were not submitted. This is not in consonance with the clear words of cl 3.6 of LA.

[30] The defendant had also pleaded the plaintiff had failed to complete the works mentioned in progress claims No 6–7. This was in fact admitted by PW1 as in for PW1 pp 57/89 to 62/89 NOP PW1. However this had been accounted for by the plaintiff when the relevant percentage of work done was claimed. This is most evident from those two progress claims and the plaintiff's submission-in-reply dated 15 April 2015 at para 7 as follows and which the court accepts:

> ... the plaintiff submits that the percentage claimed by the plaintiff for the works mentioned above can be illustrated in the table below:

Description of Works	Progress Claim No 6	Progress Claim No 7
Wiring Works	10% or 20% (Depending on the units)	10% or 20% (Depending on the units)
Aluminium & Door Works	20%	20%
Plastering of the wall	20%	20%
External ceiling	0% or 20% (Depending on the units)	0% or 20% (Depending on the units)
Roofs	70% or 100% (Depending on the units)	70% or 100% (Depending on the units
Fencing	-	-
Small drains	-	-
Sanitary/Plumbing work	20% or 40% (Depending on the units)	
Retention pond	-	-
Car park imprint	-	-
Wall & Floor finishing works	0%	0%

RETENTION SUM

[31] It follows that the claim for retention sum under progress claims No 1–5 and progress claims No 6–7 is allowed.

COUNTERCLAIM

[32] The defendant's counterclaim is premised on the expiry of contract on 31 May 2013 and that it could not be extended due to the plaintiff's failure to complete the project within the period given and that the plaintiff had stopped work since 23 April 2013. As the court had earlier found the contract had not expired the issues raised on non-completion on time and stopping work are not relevant. In any event the damages put forth as being suffered by the defendant in the appointment of new contractors to take over, additional costs in the form of difference of contract price, not being able to complete within time and losses in terms of costs and time were not proved in that no evidence was led at all in this regard.

CONCLUSION

[33] The plaintiff's claim as in para 42 is allowed and the defendant's counterclaim is dismissed. Costs to the plaintiff.

Plaintiff's claim allowed and defendant's counterclaim dismissed with costs.

Reported by Kanesh Sundrum